REMARKS/ARGUMENTS

Summary of the Examiner's Actions

The examiner rejected Claims 1, 2, 4, 5, 7 and 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,989,285 ("the '285 patent"), issued to DeVilbiss et al., in view of U.S. Patent No. 5,405,370 ("the '370 patent") issued to Irani. Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 3 and 8 under 35 U.S.C. § 103(a) as being unpatentable over the '285 patent in view of the '370 patent as applied above, and further in view of U.S. Patent No. 4,777,802 ("the '802 patent") issued to Feher. Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

The examiner rejected Claims 6 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the '285 patent in view of the '370 patent as applied above, and further in view of U.S. Patent No. 6,537,307 ("the '307 patent") issued to Augustine *et al.* Applicant acknowledges the rejection under 35 U.S.C. § 103(a).

Rejections under 35 U.S.C. § 103(a)

In order to support a rejection under 35 U.S.C. § 103(a), "the examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness." MPEP § 2142, pg. 2100-121, 8th ed. "To reach a proper determination under 35 U.S.C. § 103(a), the examiner must step backward in time and into the shoes worn by the hypothetical 'person of ordinary skill in the art' when the invention was unknown and just before it was made." *Id.* The first element in establishing a *prima facie* case of obviousness is that "there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings." MPEP § 2143, pg. 2100-122, 8th ed. The second element is that there "must be a reasonable expectation of success." *Id.* The third element is that "the prior art reference (or references when combined) must teach or suggest all the claim limitations." *Id.*

The relevant facts for finding obviousness relate to (1) the scope and content of the prior art, (2) the level of ordinary skill in the field of the invention, (3) the

differences between the claimed invention and the prior art, and (4) any objective evidence of nonobviousness such as long felt need, commercial success, the failure of others, or copying. *Graham v. John Deere Co.*, 148 U.S.P.Q. 459, 467 (1966; *see Continental Can Co. v. Monsanto Co.*, 20 U.S.P.Q.2d 1746, 1750-51 (Fed. Cir. 1991). The Supreme Court in *Graham* stated that "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." *Graham*, 383 U.S. at 17, 148 U.S.P.Q. at 467. The *Graham* court further stated that "[s]uch secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy." *Id.*

The examiner rejected Claims 1, 2, 4, 5, 7 and 9 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,989,285 ("the '285 patent"), issued to DeVilbiss *et al.*, in view of U.S. Patent No. 5,405,370 ("the '370 patent") issued to Irani. The examiner indicated that DeVilbiss *et al.*, "disclose temperature controlled blankets comprising a first sheet (Figure 3, #38) which is fluid impermeable, a second sheet (28) secured to the first sheet and which is made from air impermeable material and having numerous apertures (54) for releasing air toward the patient; a supply inlet (62) and manifold (region adjacent to inlet 62 that supplies gas to six longitudinal channels as shown in Figure 2); a return outlet (60) and return manifold (region adjacent to outlet 60 that returns gas from the six longitudinal channels as shown in Figure 2); and a heat source (122) for collecting, heating and directing air toward the patient through the second sheet (col. 3, line 50-col. 5, line 43 and col. 6, lines 5-47)."

The examiner admitted that DeVilbiss *et al.*, "fail to specifically disclose the second sheet forms a drape on all four sides of the blanket to define a skirt for draping over the patient." However, the examiner opined that "Irani discloses an inflatable air blanket formed with two sheets with the lower sheet permitting penetration and diffusion of air therethrough and configured to drape over the patient by supplying additional material beyond the air permeable regions (essentially as the claimed structure of a drape, Figures 3, 5 and 8, #16a and col. 3, lines 20-43)." The examiner concluded that "at the time of the invention, it would have been obvious to one of

ordinary skill in the art of medical thermal blankets to modify the blanket of DeVilbiss *et al.*, as taught by Irani, to provide additional material beyond the air distribution region to serve as a drape to confine the air to the region surrounding the patient."

With respect to Claims 2 and 7, the examined indicated that DeVilbiss *et al.*, "further disclose the first securement region as claimed as well as up to six longitudinal and lateral channels."

DeVilbiss *et al.*, disclose a temperature controlled blanket and a temperature controlled bedding system providing recirculated temperature controlled fluid and temperature controlled gas. The DeVilbiss *et al.*, device defines a plurality of concentric, U-shaped channels terminating at one end at a supply manifold and at the opposite end at an exhaust manifold. In the DeVilbiss *et al.*, a substantial portion of the air introduced therein is directed through the outermost channel as a result of the disclosed configuration. A gradient in air volume will result with the smallest volume of air being received through the innermost channel.

Similarly, a temperature gradient will be resultant along the length of each channel. A conditioned temperature results at the supply manifold, with a temperature closer to ambient temperature exiting toward the exhaust manifold. Thus, there is an inherent temperature gradient from one side of the device to the other.

In the present invention, while a temperature gradient is experienced, as a result of the configuration of the various ducts, and specifically as a result of the supply ducts being disposed along the first and second sides of the blanket, with the return ducts being disposed between the supply ducts with the conditioned air traveling in the opposite direction. As a result, in the present invention, the temperature of the combined air along the length of the device is substantially consistent. Further, as a result of the air being immediately divided between the first and second supply ducts, the volume of air flow through the various ducts is substantially equalized.

Claims 1 and 7 have each been amended as indicated above to more clearly define the particular relationships between the supply manifold, supply ducts, return

manifold and return ducts. It is respectfully submitted that the prior art of record fails to anticipate or make obvious the present invention as claimed. Specifically, it is respectfully submitted that the cited prior art fails to teach a supply manifold at the proximal end extending between the first and second sides, at least one first supply duct extending between the proximal and distal ends along said first side, at least one second supply duct extending between the proximal and distal ends along the second side, a return manifold at the distal end extending between the first and second sides, and at least one return duct extending from the return manifold and terminating proximate the supply manifold and disposed between the first and second supply ducts.

In view of the amendment of Claims 1 and 7 and the arguments distinguishing the present invention from that of the cited prior art, it is respectfully submitted that the examiner's rejection of Claims 1, 2, 4, 5, 7 and 9 under 35 U.S.C. § 103(a) has been overcome. Accordingly, it is respectfully submitted that Claims 1 and 7 are in condition for allowance. Claims 2-6 are deemed allowable as depending from allowable base Claim 1. Claims 8-10 are deemed allowable as depending from allowable base Claim 7.

The examiner rejected Claims 3 and 8 under 35 U.S.C. § 103(a) as being unpatentable over the '285 patent in view of the '370 patent as applied above, and further in view of U.S. Patent No. 4,777,802 ("the '802 patent") issued to Feher.

The examiner rejected Claims 6 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the '285 patent in view of the '370 patent as applied above, and further in view of U.S. Patent No. 6,537,307 ("the '307 patent") issued to Augustine *et al.*

In view of the indicated allowability of Claims 1 and 7 as discussed above, it is respectfully submitted that the examiner's rejections of Claims 3, 6, 8 and 10 under 35 U.S.C. § 103(a) have been overcome. Accordingly, it is respectfully submitted that Claims 3, 6, 8 and 10 are in condition for allowance.

Summary

In view of the amendment of Claims 1 and 7, and the arguments presented herein, it is believed that the above-identified patent application is in a condition for the issuance of a Notice of Allowance. Such action by the examiner is respectfully requested. If, however, the examiner is of the opinion that any of the drawings or other portions of the application are still not allowable, it will be appreciated if the examiner will telephone the undersigned to expedite the prosecution of the application.

Please charge any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 16-1910.

Respectfully submitted,

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